



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,048	07/13/2001	Walter L. Peck	peck	2678

26496 7590 08/15/2006

GREENBERG & LIEBERMAN, LLC
2141 WISCONSIN AVE, N.W.
SUITE C-2
WASHINGTON, DC 20007

EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
----------	--------------

3641

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,048

Applicant(s)

PECK, WALTER L.

Examiner

Bret Hayes

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 12-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 12-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 & 12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 13 recites the limitation(s) "configured to prevent loss of said at least one ring and said at least three vertical supports". There is nothing in the disclosure to reasonably convey to one skilled in the relevant art how permanently attaching a ring to vertical supports can possibly prevent loss of the combination of the elements.
3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
4. Claims 12, 15 & 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 12 recites the limitation "said bend" in lines 1 & 3 (once each). There is insufficient antecedent basis for this limitation in the claim. Because there is no bend previously recited, the claim cannot be further treated on the merits.

Art Unit: 3641

6. Claim 15 recites the limitation "said vertical supports" in line 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 16 recites the limitation "a ridge on each of said at least one ring", which is improper. While the recitation "at least one ring" does open the claim to reciting more than one ring, it does not provide sufficient antecedent basis for the use of 'each', because there need only be one to anticipate the claim. While this may be an arguable rejection, Examiner suggests --at least one ridge on said at least one ring--, or some such, for precision.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 & 13 – 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 760,879 to Kunzman.

10. Re – claim 1, Kunzman discloses the claimed invention including a plant stand, see Title, comprising at least one ring 1 and at least three vertical supports 3 configured to slide around the circumference of said ring without being disengaged from said ring.

11. Re – claim 13, Kunzman further discloses wherein said ring is permanently attached to said supports and configured to prevent loss of said ring and said supports*. *See above 112, 1st paragraph, rejection.

Art Unit: 3641

12. Re – claim 14, Kunzman further discloses wherein said supports are slidably engaged on said ring and when said supports are touching one another the stand collapses to be stored in a flat position, see Fig. 2, for example.

13. Re – claim 15, Kunzman discloses the claimed invention including a plant stand, see Title, comprising at least one ring 1 and at least three vertical supports 3 configured to slide around the circumference of said ring without being disengaged from said ring, and configured to collapse flat against said supports, see Fig. 2, for example.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunzman, as applied above to claim 1, in view of US Patent No. 2,051,596 to Harbaugh (previously cited).

16. Kunzman discloses the claimed invention except for an indentation on each of the supports, a bend at the end of each of the supports, the bend being below the indentation, and a ridge on the at least one ring, the ridge protruding from the at least one ring and in communication with the indentation on the at least three vertical supports. Harbarugh teaches a plant promoting device including an indentation 6, 6', 6'', 6''' on each of at least three supports 3, 3', 3'', 3''', a bend 7, 7', 7'', 7''' at the end of each of the supports, the bend being below the indentation, and a ridge 5, 5', 5'', 5''' on the at least one ring 4, the ridge protruding from the at

Art Unit: 3641

least one ring and in communication with the indentation on the at least three vertical supports in the same field of endeavor for the purpose of constructing the device to be opened and folded flat. It would have been obvious to one of skill in the art at the time the invention was made to modify Kunzman to include an indentation on each of the supports, a bend at the end of each of the supports, the bend being below the indentation, and a ridge on the at least one ring, the ridge protruding from the at least one ring and in communication with the indentation on the at least three vertical supports as taught by Harbaugh in order to more efficaciously construct the device.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3641


Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902 or email address bret.hayes@uspto.gov. The examiner can normally be reached Monday through Thursday from 5:30 am to 4:00 pm, Eastern Standard Time.

The Central FAX Number is **571-273-8300**.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached at (571) 272 – 6873.

Bret Hayes

11-Aug-06


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER